Supreme Court, U. S.
FILED
MAY 10 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 75-1638

HORACE V. KELL, et al, APPELLANT

v.

NICK P. CHIVILIS, et al, APPELEE

APPEAL FROM THE SUPREME COURT of GEORGIA

STATEMENT AS TO JURISDICTION

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Appellants submit herewith their jurisdictional statement as required by Rule 13 of the Rules of the Supreme Court of the United States.

STATEMENT AS TO JURISDICTION

OPINION BELOW

The official report of the opinion delivered by the Georgia Supreme Court appealed from in this case is contained in:

Vol. 236 Georgia Supreme Court p. 226

and a copy of the opinion is appended here to @ App. p. 1.

GROUNDS OF JURISDICTION

This civil complaint, in which the Supreme Court of Georgia denied a motion for a rehearing to review its previous judgment sought to secure declaratory judgment and injunctive relief for taxpayers against a tax digest alleged to have been prepared under statutes of the State which were attacked as unconstitutional in the complaint. (R. 11)

The statutes under attack in the original complaint were those authorizing a different source and standards of valuation for property of persons and corporations making their returns to the State Revenue Department as compared to the source and standards for assessments of property of the plaintiffs; and statutes providing for the use of "ratio study" made by the State De-

partment of Audits in the taxing process.

Plaintiffs, by an amendment (R.31)added to the complaint a second count setting out that on the day prior to the date set for hearing on the first Count of the complaint, the original defendants had forwarded to the State Revenue Commissioner the 1974 tax digest; and that the Commissioner had approved the digest. It was also alleged that the State Revenue Commissioner was required by law to:

1- Examine the digest and adjust the valations as set out therein to make all valuatinns reasonably uniform with valuations of property in other counties of Georgia

2- Adjust valuations of property of different classes in Douglas County so as to make them reasonably uniform with valuations of other classes of property in Douglas County, and

3- Adjust valuations as set out in the Douglas County digest so that the valuations set out therein would be uniform with valuations of property of other taxpayers who make their returns to the State Revenue Commissioner rather than to the local Board of Tax Assessors.

Count II alleged that the valuations of plaintiffs property in the 1974 digest of Douglas County were not reasonably uniform with the valuations of property owners in

other counties in Georgia; with valuations of other classes of property in Douglas County; and with valuations of property of those making their returns directly to the State Revenue Commissioner.(R. 32)

Count II sought injunctive relief as to all of the defendants, including the State Revenue Commissinner from implementing the 1974 tax digest because the same was discriminatory, unequal and unconstitutional in that the actions of the State Revenue Commissioner were not subject to review administratively or otherwise, except at the instance of the local Board of Assessors & who were joint defendants.

In a subsequent amendment to both Counts I and II of the complaint, plaintiffs added a number of specific attacks on the Georgia Statutes which require a use of the standard of "fair market value" in the taxing process on the ground that such statutes are too indefinite and vague to be enforced in that men of common intelligence must necessarily guess at its meaning and differ as to its application; and it is therefore a deprivation of plaintiffs' property without due process of law & violative of the 14th Amendment

The said amendment further contained an att-

ack on the said statutes on the grounds that if they were not "per se" violative of the 14th Amendment, still they deprive plaintiffs of their property without due process of law as applied in that the use of the standard of "fair market value" as implemented had caused plaintiffs' property to be assessed and taxed at a high & disproportionate value as compared to the property of others in the county; & with the property of those owning property in other counties of Georgia; and with property of those who make their returns to the State Revenue Commissioner.

The said amendment further included attacks on the Georgia Statutes providing a use of a "ratio study" made annually for application to the various county tax digests by the Department of Audits on the ground that it deprived owners of personal property of their property without due process of law contrary to the 14th Amendment of the U.S. Constitution because it refers to a "representative number of usable transactions" that are to be studied & this term is too vague and indefinite to be enforced because men of common intelligence must guess at their meaning & differ as to their application; and for the additional reason that owners of per-

sonal property and their taxes theron are affected and controlled by the ratio between real estate sales figures to real estate assessments; when said standard or ratio is unrelated in any way to values of personal property. (R. 66)

This amendment to each count contained a prayer that the court enter a declaratory judgment holding the Georgia Statutes attacked as unconstitutional & based on the allegations that they violated the 14 th Amendment to the U.S. Constitution.

On the 3rd day of July, 1975, and after lengthy evidentiary hearings, the trial court entered an order in which it recognized the "broad attacks" made on the 1974 Douglas County tax digest, the tax structure of the State and certain statutes governing such tax structure. (R. 217)

In that order, the trial court stated, as one of the issues before the court, " 5. Are the laws relating to assessment of property of plaintiffs unconstitutional as compared to the statutes relating to railroads and public utilities?" -and-

" 6. Whether or not the laws relating to the assessment of property of the plaintiff is unconstitutional as compared to the st - atutes relating to railroads and public utilities?" -and-

"7. Does the method used as to railroad and public utilities for assessment purposes when compared with that used by local authorities as to plaintiffs create an unequal treatment of the plaintiffs and result in their paying a disproportionate high percentage of Douglas County taxes?" (R. 221) -and-

"8. Is the term "fair market value" unconstitutional as being too vague and indefinite..." -and-

" 9. If the term "fair market value" is, per se, an unconstitutional standard, has it been unconstitutionally applied in Douglas County and in the State of Georgia?"

" 10. Does the fact that the taxing laws of Georgia providing for the return, assessment and collection of taxes as to railroad companies....providing that the companies' property shall be assessed in the first instance upnn the basis of the value given by the returns invalidate such law or result in a void tax digest in Douglas County because the laws providing for the assessment of personal property does not have such provision?" -and-

"11. Are plaintiffs treated unequally and thereby paying a disproportionately high percentage of Douglas County taxes because

railroads and public utilities under the law have their property apportioned across the several counties of the state and because the State Revenue Commissioner is authorized to adjust returns of such taxpayers on the basis of "any information he can obtain"? " -and-

"12. Is Code Section 92-7008, Ga. Laws 1970, pp. 542, 543; 1972, pp. 829-831) unconstitutional on the basis that the words "representative number of usable transactions" is too vague and indefinite to have practical meaning without additional guidelines to assure legal application of the law?" -and-

"13. Does Code section 92-7008 and known commonly as the "ratio study statute" destroy uniformity of implementation of the taxing laws as between owners of real estate and owners of personaly because of the use of the ratio study as applied to both realty and personalty?" -and-

"16. Are the plaintiffs being treated in a non-uniform and unequal manner under all or either of the complaints made by them so as to invalidate the tax digest of Douglas County, Ga. or so as to invalidate a portion of the levy for the year 1974 to the extent that it can be considered by the court under the evidence in the record."

In its order of July 3, 1975, the trial court found that real estate in Douglas County adjacent to Carroll and Cobb County as compared to property in said other counties were assessed at as much as five times more at fair market value than in the other coun-counties. (R. 227)

The trial court also found, that as a result of the use of the sales ratio study,in 1974, property in Douglas County, Ga. was assessed at 100% of fair market value for taxes, while properties in adjoining counties were assessed at far below 100% of fair market value. (R. 228)

The trial court further found, that the increase in the digests of surrounding counties for 1974 was the result of capital improvements of a substantial nature ; but that the increase in Douglas County was because of a general reappraisal of property. (R. 228)

The trial court further found, that the levy of 1/4 mil tax for state purposes in the Douglas County jurisdiction which was valued on the digest at 100% of fair market value requires the payment of twice as much State taxes as is required in Paulding County, in which property was assessed at 50% of fair market value. (R. 241)

The trial court further found that the cit-

izens of Douglas County are required to pay a proportionately larger share of taxes for education of their children than those persons owning property in other counties. (R. p. 242)

The trial court found no invalidity of the digest for any reason claimed resulting from differences in statutes or in assessments of railroads or public utilities. (R. 242)

The trial court found that the term "fair market value" and the use thereof did not result in a lack of uniformity. (R. 243)

The trial court found that plaintiffs did not pay disproportionate taxes because of an apportionment of railroad and public utility properties among the several counties.

The trial court found no fault in the use of the ratio study statute. (R. 243)

The trial court found plaintiffs were treated in a non-uniform and discriminatory manner in equalizing properties between the counties for ad valorem tax diges purposes and a discrimination because of lack of uniformity within the territorial limits of the State. (R. 243)

The trial court entered an injunction that State levy of ad valorem taxes be enjoined& refused an injunction as to County taxes on the same digest.

Appellants in Enumeration of Errors # 9 in the State Supreme Court assigned error on a finding by the trial court that there was no inequality or lack of uniformity in the Douglas County digest for 1974 for any reason claimed by plaintiffs resulting in differences in statutes or assessments of railroad companies or public utilities. Appellants also enumerated as error in Case No. 30620 each substantive finding of the trial court contrary to the contentions of plaintiffs set out in the complaint.

The State Revenue Commissioner appealed the trial court's order enjoining the collection of State tax, and the taxpayers appealed from the portion of the order denying injunctive relief as to collection of County taxes.

The Supreme Court of Georgia expedited the hearing of the appeals in these cases, and in other cases involving basically the same issues; heard arguments in all cases on the same date, and decided them all on Jan. 27, 1976.

The Supreme Court found against the contentions of the appellants as to the Constitutional attacks on the Statutes relating to the return and assessments of railroads and public utilties and as to the attack on the standard of "fair market value".

The Supreme Court also found against the

contentions of plaintiffs as to the unconstitutionality of the "sales ratio study", and the Supreme Court further held that because it would create a "chaotic condition in the tax affairs of the State" if individual taxpayers in each county had a right to challenge the validity of the decisions of the State Revenue Commissioner as to equalizing the valuations of property as between the counties and that the individual taxpayers had no right or remedy to challenge such decisions even when they created a situation as found by the trial court in which appellants were paying more than their fair share of the taxes.

The Supreme Court reversed the injunction entered by the trial court as to the collection of the State tax levy.

Appellants filed a motion for rehearing, pointing out that the decision of the Supreme Court had violated their Federal Constituional rights to due process and equal protection of the laws.

On February 11, 1976, the Supreme Court entered its final judgment denying a rehearing to plaintiff-appellants.

This appeal is taken pursuant to 28 U.S.C 1257 (2), providing for an appeal from the decision of the highest Court of a State

to the U.S. Supreme Court where substantive Federal questions were decided by the State court adversely to the contentions of the party appealing.

The judgment sought to be reviewed was dated February 11, 1976, and entered the same date and overruled the motion for a rehearing as to the decision of said Supreme Court of Georgia entered on Jan. 27, 1976.

The statute believed to confer on this Court jurisdiction in such cases is:

28 U.S. Code Section 1257 (2).

Cases sustaining jurisdiction in such as the present case are:

Bantam Books, Inc v. Sullivan,372 U.S 58

Myles Salt Co. v. Iberia, 239 U.S. 478

The statutes involved in this appeal are:

Georgia Laws 1909, p. 72 (Ga. Code Ann. 92-5701)

Georgia Laws1909 p. 78 (Georgia Laws 1968 p. 385 (Ga. Code Ann. 92-5702)

Georgia Laws 1968, pp. 358,359 (Ga. Code Ann. 92-5703)

Georgia Laws 1889, p. 29 (Ga. Code Ann. 92-2703)

Georgia Laws 1889, p. 29; Georgia Laws 1917 p. 197; (Ga Code Ann. 92-2704)

Georgia Laws 1889 p. 29; Georgia Laws

1916 p. 34; Georgia Laws 1927 p. 136 ; Ga. Code Ann. 92-2706.

Georgia Laws 1927, p. 98; Georgia Laws 1935 p. 64, Ga. Code Ann. 92-5902.

Georgia Laws 1972, p. 1119; Ga. Code Ann. 92-5903.

Georgia Laws 1877 p. 126; Georgia Laws 1905 p. 68; Georgia Laws 1972, p. 1123; Ga. Code Ann. 92-600.

Georgia Laws 1970 p. 542-543: as amended by Georgia Laws 1972 p. 829-831; Ga. Code Ann. 92-7008.

The laws attacked in this appeal are appended hereto, see Appendix- pp.

QUESTIONS PRESENTED

1. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the Constitution of the United States by the decision that they have an adequate and complete remedy at law to challenge the uniformity of their tax assessments when they are not entitled to appeal inequalities created by the changes made in the returns of other taxpayers, but only changes made in the returns of appellants?

2. Were appellants deprived of their property without due process of law by the

decision upholding procedures set out in Georgia taxing statutes which authorizes and requires railroads and public utility. companies to make their property tax returns to, and have their assessments adjusted by the State Revenue Commissioner; while at the same time authorizing and requiring appellants to make their returns to and have their assessments adjusted by local Board of Tax Assessors, and no method of contesting the equality and uniformity of such assessments is provided by law?

3. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the United States Constitution by the decision that ratified and confirmed a tax digest in which there was a finding by the Court, as a matter of fact, that appellants property was assessed at 100% or more of fair market value, while property of public utilities was assessed 40% of fair market value?

4. Is the standard "fair market value" established by Georgia taxing statutes too vague and indefinite per se (or as implemented) so as to make such statutes unconstitutional because violative of the 14th Am-

endment to the United States Constitution?

5. Are Georgia taxing statutes providing for the use of a "ratio study" of real estate sales as a standard for appriaising & assessing personal property violative of the 14th Amendment to the Constitution of the United States?

6. Did failure of the State Revenue Commissioner to equalize the assessments of property within Douglas County as required by Statutes, deprive appellants of their property rights without due process of law contrary to the 14th Amendment to the Constitution of the United States?

7. Did the Supreme Court judgment reversing the trial courts' enjoining of the 1974 State of Georgia tax levy in Douglas County in spite of the lack of a remedy or process to question and correct the State Revenue Commissioner's failure to examine and make uniform the tax digests of the various counties in Georgia, deprive appellants of their property without due process of law contrary to the 14th Amendment to the Constitution of the United States?

8. Did the actions and decisions set out in 1-7 above violate the equal protection requirements of the 14th Amendment to the

Constitution of the United States, and the 5th Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

(a) The Federal questions involved in this appeal were raised in the following manner and at the times indicated:

Appellants were plaintiffs in the trial court and sued originally the local taxing officials in the county. The real basis of their suit was that the tax assessors had arbitrarily changed the values of appellants' property returned by them as a result of a scheme and practice to increase tax assessments in the County. (R 8). It was contended that the changes made on the returns of appellants were not proportionate nor equal to the changes made upon the returns of other property owners in Douglas County and in other counties in the State. It was contended in addition, that the same standards and methods of assessing real estate and personal property were not used, and the results of this procedure were that the assessments bore little relationship to the standard

of "fair market value" for all property required by the taxing laws.(R.8) It was further alleged that plaintiffs' property had been assessed in a discriminatory manner when compared to the owners of property who made their returns to the State Revenue Commissioner. (R.9) It was also set out in the complaint that the tax assessors had used studies of sales of real estate made by the Department of Audits without using any studies of sales of personal property. (R.9) The complaint prayed that the statutes authorizing the return of property to the State Revenue Commissioner by railroads and public utilities ; and the statutes providin for the use of the "sales ratio" study in the taxing process be held void because violative of the United States Constitution. (R. 11) Subsequently, and after an amendment making the State Revenue Commissioner a party to the cause, plaintiffs amended their complaint (R. 60) and contended in the amendment that the use of the "fair market value" standard and the statutes providing for the use of "fair market value" were too vague and indefin-

ite to be capable of enforcement. In the amendment, appellants also attacked the system of laws established by specific statutes set out in the complaint whereby the railroad and public utility companies in Georgia are authorized to make their returns of property, not to the tax assessors of the various counties, as the appellants were required to do, but to the State Revenue Commissioner, whose duty it becomes to examine such returns & "if in his judgment" such property was'nt returned at full value, then he would adjust such values "from any information he could obtain." These assessing laws also favor the utilities over appellants in providing them with the remedy of an affidavit of illegality, which is not available to appellants. This amendment further attacked the laws providing for the use of the "sales ratio" study on the grounds that it excluded utilities' property; it was vague and indefinite in providing for a study of a "representative number of usable transactions", and it did not provide for the study of personal property sales; but personal property assessments are adjusted by the use of such study.

The complaint, as amended, asked that the court hold the statutes attacked void because violative of the 14th Amendment to the United States Constitution and to enjoin implementation of the Douglas County tax digest because it was prepared under the authority and procedures of these statutes. (R. 65,66).

The court then had extensive evidentiary hearings and appellants produced the following testimony: The tax assessor of an adjoining county testified that it would be "impossible" to assess property properly under the Georgia tax laws (R. 176) Also Fulton County tax assessor Chairman testified it would be "impossible" to do a check of values of personal property. (R. 140) The indefiniteness of the " fair market value" standard is reflected in the testimony of one assessor that " fair market valu is what you pay for a piece of property" and testimony of another that " if a person pays $36,000 for property maybe it is and maybe it is not the fair market value."(R. 181 & 145) Cobb County assessor testified that in his county, where property sells for $11,000 per acre, it is still sometimes

assessed at $5,000/acre. (R. 182) The Douglas County assessor testified that in using the "vair market value" standard, the Board established uniform per acre value assessments as follows: wasteland $112- common land $938: and road frontage $ 2,250 per acre. (R 272.) In the evidentiary hearings, the property tax division director of the State Department of Revenue testified that the property of public utilities is not assessed by the use of the "ratio study" and that the property of the utilities is not assessed by individual items, as is the property of individuals, but these companies' property is taxed by applying an assessed value of the "whole company" as a business, considering profit or loss & many other factors that the individual is not allowed to have considered. (R.272) The trial court recognized the broad constitutional attacks made on the taxing statutes and administration thereof (P. 219-223), and entered an order enjoining the collection of the 1/4 mil State tax levy for 1974 against plaintiffs because of the great disparity (as much as 500%)

in the assessments of plaintiffs and those taxpayers living in surrounding counties. (R. 227). The trial court found from the evidence that all property in Douglas County was on the tax digest at 100% of fair market value while the property of those owning property in surrounding counties was far below 100%, because of the use of the "sales ratio study".

The trial court, in its opinion, recognized a landmark decision of the U.S. Supreme Court in tax cases which arose in Georgia, Greene v. L & N Railroad Co. 244 U.S 499 and the rationale of the present complaint when he quoted therefrom, " the duty to assess at full value is not supreme but yields to the duty to avoid discrimination, For want of uniformity in taxable values, the assessments made against the property of the plaintiff.. & other similarly situated taxpayers are null and void; they are clearly violative of the uniform-taxation clause of our Constitution, and the equal protection clauses of our Federal Constitution." (R. 230).

In spite of the overwhelming evidence & even its own findings of fact that property of plaintiffs was assessed unequally

and discriminatorily, the trial court did not enjoin the collection of County taxes based on the assessments, but did enter an injunction against the State tax levy.

The appellants appealed his decision as related to collection of County taxes, and the State Revenue Commissioner appealed it as it related to the enjoining of the 1/4 mil state levy, and appellants filed a cross appeal.

The Supreme Court of Georgia expedited a hearing on these cases, and cases of similar import, heard arguments on all of the cases on the same day and decided the cases on the same day.

In these two cases from Douglas County, the Supreme Court of Georgia denied the appeal of plaintiffs, and sustained the appeal of the State Revenue Commissioner, and in its decision, it stated that the plaintiffs were not entitled to attack the non-uniform and discriminatory assessments of their property made by the State Revenue Commissioner, but only the county tax assessors can question adjustments made by him. (App. 7) It is difficult to understand how this could be a remedy for the individual taxpayer, when the county tax assessors

are charged by Georgia Laws to follow the directives and procedures established by the State Revenue Commissioner.

To the decision of the Supreme Court of Georgia, appellants filed a motion for a rehearing in which basically the same constitutional attacks on the various statutes and procedures were contended to be applicable to the Supreme Court's decision in the case; and in which the Supreme Court's voiding the injunction against the State tax levy was attacked as being violative of the 14th and 5th Amendments to the Constitution. (App. 16)

The Supreme Court of Georgia, on the 11th day of February, 1976, rejected all of the appellants' contentions, and denied a rehearing. (App. 21)

FEDERAL QUESTIONS ARE SUBSTANTIAL

The federal questions raised in the trial court and Supreme Court of Georgia, involving whether the state statutes relating to tax assessments and the manner in which the statutes were applied, were violative of the 14th and 5th Amendments, were of the essence of appellants' claims. They sought protection of the court from discriminatory

taxing statutes and procedures as being an infringement of their federal constitutional rights. The trial court recognized the evil as applied at the State level and enjoined the tax; but failed to provide the taxpayers a remedy for the unequal and discriminatory county taxes.

The Supreme Court of Georgia took away even the small relief afforded by the trial court.

Both courts held the taxing statutes to be constitutional (because they upheld the payment of taxes sought to be imposed on appellants).

The federal questions which were raised at the very beginning of this litigation, and which were pressed continuously in the trial and appellate State Courts, were of the very essence of the suit, and would be determinative of the issues if properly & consistently adjudicated.

Because of the fact that not just these appellants, but all of the property owners in Georgia are oppressed by these taxing laws that give tremendous advantages to railroad companies and public utilities

and because these laws spawn inequality and non-uniformity in the tax burden of the citizens of Georgia, the questions presented are of a substantial nature, and the resolution of these questions involving federal constitutional questions and considerations, should require plenary consideration, with briefs on the merits and oral argument.

Respectfully submitted,

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GEORGIA, POLK COUNTY.

I, Marson G. Dunaway, Jr., one of the attorneys for HORACE V. KELL, appellant, herein, hereby certify that on the 8th day of May, 1976, I served a copy of the foregoing STATEMENT AS TO JURISDICTION on counsel for the appellees herein, by mail- a copy thereof, in an envelope with first class postage prepaid to:

Hon. Arthur K. Bolton, Attorney General
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Hon. J. Alexander Porter
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Hon. WilliamC. Tinsley II
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Douglasville, Ga. 30134

This 8th day of May, 1976.

Marson G. Dunaway, Jr.
pf Counsel for Appellants.

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APPEAL FROM THE SUPREME COURT of GEORGIA

Appendix to
STATEMENT AS TO JURISDICTION

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30520. CHIVILIS, Commissioner v. KELL et al

30620. KELL et al v. DOUGLAS COUNTY, GEORGIA et al

Jordan, Justice.

Kell and others, taxpayers of Douglas County, filed their complaint, as amended against the County of Douglas and named officers thereof, and the State Revenue Commissioner, in which they alleged that the assessed values of their properties as returned by them have been arbitrarily changed and increased by the Tax Assessors for the 1974 ad valorem tax digest as the result of an illegal and nonunform scheme, plan, and practice to increase tax assessments in Douglas County. Particulars were detailed of the methods used which resulted in the alleged lack of uniformity. This lack of uniformity was asserted as between individual taxpayers in Douglas County; individual taxpayers in Douglas County who returned their properties to the county and those who returned their properties to the State Revenue Commissioner; and individual taxpayers in Douglas County and individual taxpayers in the remainder of the State.

The original complaint sought to enjoin the Tax Commissioner from forwarding the proposed 1974 digest to the State Revenue Commissioner for approval. Prior to the

hearing on the temporary injunction, the digest was submitted to the State Revenue Commissioner and approved by him. Thereafter the State Revenue Commissioner was named as a party defendant. The complaint as amended sought to permanently enjoin the implementation of the tax digest and a levy of taxes thereon until the digest is corrected; to declare the rights of the taxpayers; to declare certain statutes unconstitutional; and other relief.

After hearing evidence the trial judge found that the Douglas County digest was not invalid as a result of the failure of the State Revenue Commissioner to equalize classes of property within the county; that the term "fair market value" and the use thereof have not resulted in a lack of uniformity in the county; and that the use of the ratio study statute does not destroy uniformity as between taxpayers of the county. He further held that there has been no substantial lack of uniformity in the assessment of property between individual taxpayers in Douglas County; the taxpayers are not treated unequally, and do not pay a disproportionately higher percentage of Douglas County taxes because railroads and public utilities have their properties apportioned across the several counties of the State; the taxpayers

of Douglas County are being treated in an equal manner in the equalizing of property for ad valorem tax purposes as between the counties by the State Revenue Commissioner.

The trial judge temporarily restrained the defendants from collecting the 1/4 mill tax levy upon taxpayers of Douglas County for State purposes; and from collecting interest upon 1974 tax executions in excess of 7% per annum. All other temporary injunctive relief was denied.

The State Revenue Commissioner appeals from that portion of the order temporarily restraining the defendants from collecting the 1/4 mill State tax levy.

The taxpayers appeal from the portion of the order denying temporary injunction as to the collection of 1974 taxes due Douglas County.

1. In Tax Assessors v. Chitwood, 235 Ga. 147 *218 SE2d 759) (1975), this court held that a county board of equalization, pursuant to Code Ann. 92-6912 (5) (A) and (4) (B) (Ga. L. 1972, pp. 1094, 1095), has full authority to fashion an adequate and appropriate legal remedy to redress grievances of taxpayers regarding the valuation of individual parcels of land and the uniformity of the county tax assessments. See also Grafton v. Turner, 227 Ga. 809 (183 SE2d 458) (1971).

The trial judge, therefore, did not err in holding that the taxpayers had no right to injunctive relief because of the alleged failure of the Douglas County Tax Assessors to make uniform assessments as between individual taxpayers in Douglas County.

2. The taxpayers' enumerated erros and arguments pertaining to the trial judge's finding that they were not unequally treated in comparison with railroads and public utilities who make their returns to the State Revenue Commissioner are: (a) tha the trial judge found that the properties of railroads and public utilities are assessed in Douglas County at 40% of fair market value and the land in Douglas County is assessed at 100% of fair market value; and (b) the term "fair market value" violates the due process clause of the Constitution because it is too vague and indefinite to be enforceable.

There is no merit in these contentions.

(a) The properties of individual taxpayers who make their returns to the county, and the properties of railroads and public utilities who make their returns to the State Revenue Commissioner are returned at 100% fair market value and placed on the tax digest at 40% of fair market value. There is no lack

of uniformity in the laws pertaining to both classes of taxpayers. Ogletree v. Woodward, 150 Ga. 691 (105 SE 243) (1920).

The trial judge's finding of fact is not subject to the interpretation placed on it by the taxpayers. He found that both classes of property were valued at 100% of fair market value and assessed for tax purposes at 40% of fair market value.

(b) The definition of "fair market value" which existed at the time of the assessments in the present case (Code 92-5702, as amended by Ga. L. 1968, p. 358) was not too vague and indefinite to be enforced.

3. It was not error for the trial judge to hold that the use of the ratio study statute (Code Ann. 92-7008 et seq.; Ga. L. 1970, p. 542, 1972, p. 829) did not destroy uniformity as between the taxpayers of the county.

4. The trial judge did not err in holding that the digest was not invalid as the result of the failure of the State Revenue Commissioner to equalize classes of property within the county. Griggs v. Greene, 230 Ga. 257 (3) (197 SE2d 116) (1973).

5. The trial judge found from the evidence that taxable property in five

counties surrounding Douglas County was assessed at lower valuations than that in Douglas, resulting in discrimination against property owners in Douglas County and the payment by them of a higher State tax than the residents of the surrounding counties.

Code Ann. 92-7001 (Ga. L. 1966, pp. 45, 46; 1970, pp. 91, 92; p. 642; 1972, p. 1974) requires the State Revenue Commissioner to examine the tax digests of the counties of the State and to require adjustments in the digests in order to equalize the values of property throughout the State.

In Griggs v. Greene, 230 Ga. 257 (4) (197 SE2d 116) (1973) this court held: "The Acts referred to in the foregoing headnote [Code Ann. 92-7001 through 92-7002.1] are not violative of the due process and equal protection provisions of the State and Federal Constitutions by reason of their failure to provide either singly or collectively for notice and an opportunity to be heard to individual taxpayers in counties where adjustments of individual assessments are effected by reason of an order of the revenue commissioner directing a percentage adjustment in the digest of the county as to the whole class of tangible property." There was an ex-

tensive quotation in the Griggs case, at page 270, from Ogletree v. Woodward, 150 Ga. 691, supra, in which this court discussed the impracticability of individual taxpayers being heard on decisions made by the (then) State tax commissioner in requiring an adjustment of the county digest. It was pointed out that any objection to an adjustment in the digest must come from the county tax assessors.

The same reasoning applies to a question concerning the proper adjustment of values in a county digest in comparison with other counties of the State. It would create a chaotic condition in the tax affairs of the State if individual taxpayers in each of the counties had the right to challenge the factual decisions of the State Revenue Commissioner in equalizing "as far as practicable" (Code Ann. 92-7001 (b)) the values of property subject to taxation in the State.

The holding in Griggs v. Greene, 230 Ga. 257 (3), supra, and cases following it, that injunction was proper to enjoin the enforcements of orders of the State Revenue Commissioner subdividing classes of property in an unconstitucnal manner for adjustments in county digests, is not in point here. Here the duty of the State Revenue Commissioner

to equalize the digests is acknowledged, but it is asserted that he performed his duty in an improper manner. If objection is made to the exercise of the discretion of the State Revenue Commissioner in equalizing digests, it must come from the county, and not from individual taxpayers.

It was error for the trial judge to enjoin the enforcement of the State's 1/4 mill levy.

Judgment affirmed in part and reversed in part. All the Justices concur.

Georgia Laws 1909, p. 72 (Ga. Code Ann. 92-5701)

"All property shall be returned for taxation at its fair market value."

Georgia Laws 1909, p. 75; Georgia Laws 1968, p. 358; Georgia Code Ann. 92-5702

"The intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized therefrom by cash sale, as such property and subjects are usually sold, but not by forced sale thereof, and the words "fair market value", when used in the tax laws, shall be held and deemed to mean what the property and subjects would bring at cash sale when sold in the manner in which such property and subjects are usually sold."

Georgia Laws 1968, pp. 358, 359; Georgia Code Ann. 92-5703

"All tangible property subject to taxation by the State, and county, or any other taxing jurisdiction shall be returned by the taxpayers as provided by law at its fair market value and shall be assessed at 40 per cent of said fair market value on a levy made by each respective taxing jurisdiction. The levy for State taxation shall be made by the Governor with the assistance of the State Revenue Commissioner.

It is the intent and purpose of the General Assembly of this State that the value of tangible property as referred to in the tax laws of this State shall be 40 per cent of the fair market value of such property. The requirement contained herein that all municipal corporations assess at 40 per cent of fair market value shall not apply to any municipal corporation whose ratio of assessed value to fair market value exceed 40 per cent for the tax year 1971; provided, however that any municipal corporation so exempted shall in no event assess at a ratio less than 40 per cent."

Georgia Laws 1889, p. 29; Georgia Code Ann. 92-2703

"Whenever such certificate (of county tax levy) is received by the State Revenue Commissioner, he shall proceed to assess the amount of each railroad company's property, in each of said counties, in the following manner: First, it shall be assessed upon the property located in each county, upon the basis of the value given by the returns. Second, the amount of tax to be assessed upon the rolling stock and other personal property is as follows: As the value of the property located in the particular county is to the value of the

whole property, real and personal, of the said company, such shall be the amount of rolling stock and other personal property to be distributed for taxing purposes to such county. The value of the property located in the county and the sahre of the rolling stock and personal property thus ascertained, and apportioned to each of such counties, shall be the amount to be taxed to the extent of the assessment in each county."

Georgia Laws 1889, p. 29; Georgia Laws 1917, p. 197; Ga. Code Ann. 92-2704

"Whenever the State Revenue Commissioner shall ascertain and levy in the manner specified the amount of tax due by such company to each of such counties, it shall be his duty at once to notify the president and treasurer of such railroad company of the amount due in each of said counties for county taxes of said railroads...."

Georgia Laws 1889, p. 29; Georgia Laws 1916, p. 34; Georgia Laws 1927, p. 136; Ga. Code Ann. 92-2706

"If any railroad company desires to dispute its liability to such county tax, it may do so by an affidavit of illegality, to be made by the president of said railroad or other office thereof having

having knowledge of the facts in the same manner as other affidavits of illegality are made, and shall be returned for trial to the Superior Court of the county where such tax is claimed to be owing and where it is sought to be collected, where such cases shall be given precedence for trial over all other cases, except tax cases in which the State shall be a party."

Georgia Laws 1927, p. 97; Georgia Laws 1935, p. 64; Ga. Code Ann. 92-5902

"All persons or companies owning or operating railroads, street railroads, suburban railroads, or sleeping cars in this State, all persons or companies, including railroad companies, doing an express, telephone or telegraph business (except small telephone companies, or persons doing a telephone business, whose capital stock or property is of less value than $5,000); all persons or companies doing a gas, water, electric light or power, hydro-electric power, steam heat, refrigerated air, dockage, cranage, canal, toll-road, toll-bridge, railroad-equipment, or navigation business, through their presidents, general managers, owners or agents having control of the companies' offices in this State, shall be required to make annual tax

returns of all property located in this State to the State Revenue Commissioner; and the laws now in force providing for the taxation of railroads in this State shall be applicable to the assessments of taxes on the businesses above stated." Georgia Laws 1972, p. 1119; Ga. Code Ann. 92-5903

"....Each taxpayer required to return his property to the State Revenue Commissioner for taxation shall under rules and regulations promulgated by the State Revenue Commissioner apportion the value of its various properties to this ..... and between the several tax jurisdictions in this ..... Provided, that any reasonable value directly attributable to property physically located in one Georgia jurisdiction shall not be apportioned to any other Georgia jurisdiction." Georgia Laws 1877, p. 126; Georgia Laws 1905, p. 68; Georgia Laws 1972, p. 1123; Ga. Code Ann. 92-6001

"The State Revenue Commissioner shall carefully scrutinize the returns made to him, and if in his judgment the property embraced therein is returned below its value ..... he shall correct the same and assess the value from any information he can obtain."

Georgia Laws 1970, pp. 542, 543; as amended by Georgia Laws 1972, pp. 829-831; Ga. Code Ann. 92-7008

"The State Auditor shall establish ... an equalized adjusted school property tax digest for each county ....(which) shall be established and maintained as follows:

....(f) Establish no later than October 30, 1971, and thereafter as provided herein, for each county in the State, the average ratio of assessed value to true value of county property subject to taxation for school purposes, excluding public utility property, by establishing the ratio of assessed value to sales price for a representative number of parcels of real property, title to which was transferred during a preceding period of time, to be determined by the Auditor, and the average ratio of assessed value to sale price for the county as a whole based upon a representative number of usable transactions studied ... the Auditor shall supplement realty sales price data available in any county with actual appraisals of a represenative number of parcels of farm property and industrial and commercial property located within the county, the title to which was not transferred

within the period of time determined by the Auditor ... the Auditor shall use the same ratio for other personal property excluding motor vehicles and bank stock within the county as is finally determined for real property within the county."

MOTION FOR REHEARING

Come now Horace V. Kell, et al, appellees in case No. 30520 and appellants in case No. 30620, and within the time allowed by law, file this their motion for rehearing in the case stated and, for grounds thereof, say:

1. This court, and the trial court, deprived movants of their property rights without due process of law and deprived them of equal protection of the laws, as hereinafter set out, by the holding (in division one of this court's opinion) that movants have an adequate and appropriate legal remedy regarding the valuation of individual parcels of land and the uniformity of the county tax assessments.

They are deprived of due process of law, contrary to the 14th Amendment to the Constitution of the United States because:

(a) Movants (and others similarly situated) who did not have their parcels of land unequally assessed by defendants because of changes in their own assessments, but by changes in the assessments of other taxpayers have no right to appeal to the county board of equalization because they receive no notices from which to appeal.

(b) Movants (and others similarly situated) whose assessments were out of uniformity and equality with assessments of those persons making their returns to the State Revenue Commissioner, have no way, under the law, to have their assessments made uniform with the assessments of such persons; and in fact have no way to determine what the property of such persons is assessed at.

(c) Separate consideratwon and determination of the returns of those persons making their returns of property for ad valorem tax purposes to the State Revenue Commissioner and the movants who make their returns to the County Board of Tax Assessors, is "unequal" and "non-uniform" per se.

2. Division 2 of the opinion of this court, and the same ruling by the trial court, deprives movants of their property rights without due process of law under the 14th Amendment to the United States Constitution in the following respects, to-wit:

(a) The trial court found, as a matter of fact, that property in Douglas County was on the digest at 100% of fair market value; while the property of public utilities, et al, were assessed at 40% of fair market value. This finding required a finding under the law there was

a lack of uniformity and equality which discriminated against movants.

(b) The evidence before the trial court, and this court required a finding that the standard of "fair market value" for the assessments of property for taxation per se, and as implemented in Georgia as shown by the evidence, is too vague and indefinite to be legally enforced.

3. The third division of the opinion of this court, and the ruling of the trial judge that the use of the ratio study statute did not destroy uniformity as between movants and other taxpayers deprives movants of their property without due process of law and violates the 14th Amendment to the Constitution of the United States in that owners of personal property are taxed as a result of studies made of sales and appraisals of real property, which in their nature are inapplicable and prejudicial to establishment of values of personal property.

4. The fourth division of the opinion of this court, and the same holding by the trial judge that the failure of the State Revenue Commissioner's failure to equalize assessments of property within the county did not render the digest invalid deprived the movants of

their property without due process of law contrary to the 14th Amendment to the Constitution of the United States.

5. The fifth division of the opinion of this Court which reversed the decision of the trial court in granting movants an injunction as to collection of the 1/4 mil State Tax deprives movants of their property rights without due process of law in that it leaves the citizen at the mercy of the State Revenue Commissioner without a remedy and without a process of law to question and correct his unlawful and unconstitutional actions in approving the tax digests of the various counties in Georgia without making them equal and uniform as to assessments.

6. The errors hereinabove itemized also deprived movants of the equal protection of the laws in violation of the 14th Amendment to the Constitution of th United States, and further in violation of the 5th Amendment to the Constitution of the United States as set out hereinabove.

7. In the various divisions of the opinion of this Court set out hereinbefore, and in its judgment of affirmance in Case No. 30620 and reversal in Case No. 30520, this court overlooked the evidence requiring an opposite

judgment and findings; and further overlooked the laws, decisions, and constitutional provisions cited in movants' brief.

Wherefore, movants pray that a rehearing be granted in this case, and the decision of the court reversed in each instance.

DUNAWAY & PERRY By:
MARSON G. DUNAWAY, JR.
Attorneys for Movants
P.O. Box 269
Rockmart, Georgia 30153

GEORGIA, POLK COUNTY.

I, Marson G. Dunaway, Jr., of counsel for movants, do certify that, upon careful examination of the opinion of the court in this case, I verily believe that the facts stated and the evidence quoted in the foregoing Motion for Rehearing have been overlooked by the Court, which facts are material, and, if considered would require a different judgment from that rendered, in each case.

This 9th day of February, 1976.

Marson G. Dunaway, Jr.

No. 30620
SUPREME COURT OF GEORGIA
Atlanta, February 11, 1976

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Horace Kell et al v. Douglas County, Georgia, et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,
CLERK'S OFFICE, ATLANTA

No. 30520
SUPREME COURT OF GEORGIA
Atlanta, February 11, 1976

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Nick P. Chilivis, Comr., v. Horace Kell et al

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,
CLERK'S OFFICE, ATLANTA

NOTICE OF APPEAL TO U. S. SUPREME COURT

I. Notice is hereby given that HORACE V. KELL, et al, appellants in Case # 30620 and appellees in Case No. 30520, which cases were consolidated for hearing and decision, hereby appeal to the SUPREME COURT OF THE UNITED STATES from the judgment of this Court affirming the judgment of the trial court in case # 30620 and reversing the judgment of the trial court in case # 30520, entered on the 28th day of January, 1976, in which cases a motion for rehearing was overruled by this Court on February 11, 1976.

This appeal is taken pursuant to: 28 UNITED STATES CODE, Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. The original complaint, omitting process and entry of service.

B. The answer and motion to dismiss filed by the original defendants on the 6th day of March, 1975.

C. The plaintiff's amendment and motion filed on the 18th day of March, 1975.

D. The defenses of State Revenue Commissioner filed on the 8th day of April, 1975.

E. The motion to dismiss filed by State Revenue Commissioner on the 8th day of April, 1975.

F. The amendment to complaint filed by plaintiffs on the 14th day of April, 1975.

G. The answer of Douglas County, Ga., et al to the amendment of plaintiffs, filed on the 24th day of April, 1975.

H. The Motion to Intervene and answer, filed by Douglas County Board of Education on the 18th day of February, 1975, with court order thereon dated February 18, 1975.

I. The order of the trial Court dated July 3, 1975, granting a temporary injunction as to the State levy of tax and denying an injunction as to the County tax digest.

J. The Notice of Appeal filed in trial Court by plaintiffs on the 23rd day of July, 1975.

K. The Notice of Appeal filed by defendant State Revenue Commissioner of Georgia on the 4th day of August, 1975.

L. The Notice of Cross Appeal filed by plaintiffs on the 19th day of August 1975.

M. The Enumeration of Errors filed in this Court by State Revenue Commissioner in case # 30520.

N. The Enumeration of Errors filed in this Court by plaintiffs in case # 30620.

O. Briefs of Appellant and Appellees in Case # 30520.

P. Briefs of Appellant and Appellees in case # 30620.

Q. Transcript of the Evidence filed in this Court.

R. The Judgment of the Supreme Court in these cases rendered on January 28, 1976, affirming the trial Court in Case # 30620 and reversing the Trial Court in case # 30520.

S. The Motion for Rehearing filed by plaintffs in Case # 30620, appellees in case # 30520.

T. The Judgment of this Court overruling the Motion for Rehearing, dated February 11, 1976.

III. The questions presented by this Appeal are:

1. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the Constitution of the United States by the decision that they have an adequate and complete remedy at law to challenge the uniformity of their tax assessments when they are not entitled to appeal inequalities created by the changes made in the returns of other taxpayers,

but only changes made in the returns of appellants?

2. Were appellants deprived of their property without due process of law by the decision upholding procedures set out in Georgia taxing statutes which authorizes and requires railroads and public utilities companies to make their property tax returns to, and have their assessments adjusted by, the State Revenue Commissioner; while at the same time authorizing and requiring appellands to make their returns to, and have their assessments adjusted by, local Board of Tax Assessors, and no method of contesting the equality and uniformity of such assessments is provided by law?

3. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the United States Constitution by the decision that ratified and confirmed a tax digest in which the Court found, as a matter of fact, that appellants property was assessed at 100% or more of fair market value, while property of public utilities was assessed at 40% of fair market value?

4. Is the standard "fair market value" established by Georgia taxing statutes too vague and indefinite per se (or as

implemented) so as to make such statutes unconstitutional because violative of the 14th Amendment to the United States Constitution?

5. Are Georgia taxing statutes providing for the use of a "ratio study" of real estate sales as a standard for appraising and assessing personal property violative of the 14th Amendment to the Constitution of the United States?

6. Did failure of the State Revenue Commissioner to equalize the assessments of property within Douglas County as required by Statutes, deprive appellants of their property rights without due process of law, contrary to the 14th Amendment to the Constitution of the United States?

7. Did the Supreme Court judgment reversing the trial court's enjoining the 1974 State of Georgia tax levy in Douglas County in spite of the lack of a remedy or process to question and correct the State Revenue Commissioner's failure to examine and make uniform the tax digests of the various counties in Georgia, deprive appellants of their property without due process of law contrary to the 14th Amendment to the United States Constitution?

8. Did the actions and decisions set out above violate the equal protection

requirements of the 14th Amendment to the Constitution of the United States, and the 5th Amendment to the Constitution of the United States?

Respectfully submitted,
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Supreme Court, U. S.
FILED
SEP 22 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1975

NO. 75-1638

HORACE KELL, ET AL.,
Appellants,
v.

NICK P. CHILIVIS, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

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Ga. Code § 92-5702

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

NO. 75-1638

HORACE KELL, ET AL.,

Appellants,

v.

NICK P. CHILIVIS, ET AL.,

Appellees.

ON APPEAL FROM THE SUPREME
COURT OF GEORGIA

MOTION TO DISMISS

The appellees move to dismiss the above-styled appeal on the grounds that: (1) The federal questions sought to be reviewed were not timely or properly raised before the Supreme Court of Georgia; (2) The issues raised in the appellants' jurisdictional statement do not present a substantial federal question; and (3) The decision of the Georgia Supreme Court rested on adequate nonfederal grounds.

STATEMENT OF THE CASE

The appellants are all taxpayers residing or owning property in Douglas County, Georgia. The Board of Tax Assessors for Douglas County, in examining returns of these taxpayers, determined that the

property of the appellants was not returned at a fair and just valuation and changed the returned values of the appellants' property.

As a result of this increase in the valuation of the appellants' property, the appellants, in lieu of following the statutory process authorizing judicial review of any such increase, brought an action for an injunction and declaratory judgment in the Superior Court of Douglas County.

The appellants' complaint, which was amended twice, basically concentrated on the uniformity, or the lack thereof, of valuations placed on the property of taxpayers both within Douglas County and throughout the State of Georgia.

In the original complaint, and in the prayer for relief, the appellants asked that certain statutes be held violative of the "U.S. Constitution". Nowhere in the original complaint was there any specific reference to any particular portion of the United States Constitution which was alleged to have been violated. In the first amendment to the complaint, no reference to any violation of any part of the United States Constitution was made.

In the second amendment, the appellants made reference to an alleged violation of the U.S. Constitution, specifically asserting that the term "fair market value," the basic value upon which all

property taxation in the State of Georgia rests, was so vague and indefinite that its utilization deprived the appellants of their property without due process of law. The appellants then asserted that if the statutes attacked were not unconstitutional because of the utilization of the term "fair market value", that these same statutes were unconstitutional because the method of determining and computing the "fair market value" of the appellants' real property was different from the method of computing the "fair market value" of both the personal property of other taxpayers and the property, both real and personal, owned by railroads and public utilities in the county and the State. Finally, in the same amendment, the appellants urged that the utilization by the Georgia State Revenue Commissioner of a study made by the Georgia State auditor (for purposes unrelated to property taxation) as a tool in equalizing evaluations of property violated appellants' constitutional rights under the Fourteenth Amendment to the United States Constitution.

The decision of the superior court was adverse in parts to both the appellants and the appellees and appeals were taken by both.

The appellants, pursuant to the requirements of State law, and in order to perfect their appeal, filed an enumeration of errors in the Supreme Court of Georgia setting forth 18 grounds which were alleged to provide the basis for

reversing the superior court, none of which specifically alleged a violation of the United States Constitution.

The decision of the Supreme Court of Georgia identified and passed upon two constitutional issues, one which had been raised in the original complaint as amended and one which the court raised on its own. The court held first that the use of the phrase "fair market value", which had been attacked by the appellants, was not unconstitutional and second, that individual taxpayers could not challenge the uniformity of assessments of property between their county and other counties in Georgia and that this prohibition did not violate the taxpayers' rights under the U.S. Constitution. Importantly, the Supreme Court of Georgia only considered these issues after holding that the appellants had an adequate remedy at law, which would be dispositive of the case.

Thereafter, the appellants filed a motion for rehearing and for the first time actually asserted that each of the statutes and practices attacked violated rights protected by the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of Georgia summarily denied the motion for rehearing without opinion.

It is from this final decision that the appeal to this Court has been taken.

ARGUMENT

1. THIS CASE IS NOT WITHIN THE JURISDICTION OF THE SUPREME COURT BECAUSE THE STATE COURT DECISION RESTED ON AN ADEQUATE NONFEDERAL GROUND.

A basic factor in determining whether this Court should review a decision issued by the highest court of a particular state is whether the state court judgment is based on an adequate and independent nonfederal ground. If it is, this Court has determined that the judgment is not reviewable even though a federal question may be involved, and even through the federal question may have been wrongly decided. See Herb v. Pitcairn, 324 U.S. 117 (1945).

The decision which the appellants seek to have this Court review in fact clearly rests on an adequate nonfederal ground. Before considering any other issues, the Supreme Court of Georgia, in Division 1 of its opinion, concluded that the appellants had recourse to the Douglas County Board of Equalization, and that this forum could and would provide the appellants with an adequate and appropriate remedy at law. As a result, the Supreme Court of Georgia specifically held that the appellants were not entitled to an injunction.

The Supreme Court of Georgia proceeded to consider the other issues

raised by the appellants, but it is plain that the consideration of these issues by the court, or, conversely, the failure of the court to consider these issues, could not have changed the outcome of the case. The case was decided in the first division of the opinion, when the court held that injunctive relief was not proper in the matter.

Language supporting this conclusion is found in another recent decision of the Supreme Court of Georgia. In Chilivis v. Backus, 236 Ga. 88, 222 S.E.2d 371 (1976), the Supreme Court of Georgia considered a similar appeal and reached a similar conclusion. In Chilivis v. Backus, supra, the court held that the taxpayers, who had sought, as in the matter at bar, both injunctive and declaratory relief, had an adequate and complete remedy at law before the county board of equalization, and, more importantly with respect to the issues which are presently before this Court, the Supreme Court of Georgia concluded that the other matters raised by the appellants in the case,

> " . . . should be litigated in the appeals to the county board of equalization." Id. at 90.

Thus, and irrespective of the decision of the Georgia Supreme Court with respect to any federal question presented, the court intended to and did deny relief

to the appellants because they had failed to proceed in the proper forum utilizing the statutory procedures which the Supreme Court of Georgia has recognized as providing adequate and appropriate relief to persons in the same legal position as the appellants.

2. WITH ONLY TWO ARGUABLE EXCEPTIONS, THE APPELLANTS FAILED TO RAISE IN A TIMELY MANNER THE FEDERAL QUESTIONS WHICH HAVE BEEN ASSERTED IN THEIR JURISDICTIONAL STATEMENT.

The only attacks upon the constitutional validity of a State statute which appellants raised at all, prior to their motion for rehearing, involved: (1) Whether the phrase "fair market value" used in the basic State tax statutes is so vague and indefinite as to deprive appellants of their property without due process of law; (2) Whether the utilization of different formulae to determine "fair market value" for different property is a violation of the Fourteenth Amendment to the Constitution of the United States; and (3) Whether the State Revenue Commissioner's utilization of a "ratio study" as a tool to check the accuracy of property valuations in a particular county deprives appellants of their property without due process of law.

The Supreme Court of Georgia, in its decision, acknowledged and decided the issue involving the phrase "fair market value" on constitutional grounds

but did not find it necessary to rule on the rest of the issues raised by the appellants, a result which bars review by this Court. See Whitney v. California, 274 U.S. 357 (1927). In addition to the "fair market value" issue, the Supreme Court of Georgia on its own raised and decided one additional constitutional issue; the Supreme Court concluded that the representatives of the individual taxpayers, the counties, have standing to challenge the equality and uniformity of taxes between counties, but that individual taxpayers do not, and that this is not violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. All of appellants' other constitutional issues were raised only after the Supreme Court of Georgia's initial decision was reached.

Therefore, only these two questions, involving the utilization of the phrase "fair market value", and the conclusion that individual taxpayers did not have standing to challenge the uniformity of taxes between political subdivisions of the State, were properly raised before and considered by the Supreme Court of Georgia. As this Court has held numerous times, raising a federal question for the first time in a petition for rehearing addressed to the highest State court is insufficient unless the court actually entertained the petition and expressly decided the question. See Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945); Hansen v. Denckla, 357 U.S. 235 (1958); Herndon v. Georgia, 295 U.S. 441 (1935);

American Surety Co. v. Baldwin, 287 U.S. 156 (1932); and Forbes v. State Council, 216 U.S. 396 (1910).

Here, the Supreme Court of Georgia summarily denied the motion for rehearing without opinion and thus the appellants cannot bring themselves within the exception to the general rule stated above. The federal questions raised for the first time in the petition for rehearing have not been timely or properly raised. Therefore, all of the federal questions asserted by the appellants, with the exception of the two noted above, should be dismissed because the appellants did not timely or properly raise them.

3. THE ISSUE OF WHETHER THE PHRASE "FAIR MARKET VALUE" IS SO VAGUE AND INDEFINITE AS TO VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Georgia Code § 92-5702, one of the Code sections attacked by the appellants, defines the phrase "fair market value", which establishes the basis for all property taxation in the State of Georgia. That statute provides that:

> "The intent and purpose of the tax laws of this State are to have all property and subjects of taxation returned at the value which would be realized therefrom by cash sale, as such property and subjects are usually

> sold, but not by force sale thereof, and the words 'fair market value,' when used in the tax laws, shall be held and deemed to mean what the property and subjects would bring at cash sale when sold in the manner in which such property and subjects are usually sold."

The appellants' complaint is evidently not with the language of the definition, which is clearly specific, but rather arises because the appellants assert that persons might differ as to what the fair market value of any particular piece of property might be. The appellants' complaint arises from the fact that there is evidently no assurance that reasonable men could sit down and agree, without dissent, that a particular amount represented the true market value of a piece of property, that is, could determine what price that an actual purchaser would be willing to pay the owner of a piece of property.

However, this Court has never held that "fair market value" must be defined with that degree of specificity. The question of determining value for the purposes of taxation has been clearly and fully discussed by this Court and the issue is well settled and needs no further review. This Court has said that the principles governing the ascertainment of value for the purposes of taxation are the same as those that control in condemnation cases, confiscation cases and

generally in controversies involving the ascertainment of just compensation. See Great Northern Railway Company v. Weeks, 297 U.S. 135 (1936); West v. Chesapeake and Potomac Telephone Co., 295 U.S. 662 (1935) and Olson v. United States, 292 U.S. 246 (1934). In making an assessment, this Court has clearly stated that assessors are free to consider all pertinent facts, estimates and forecasts and to give each of these factors such weight as they may be reasonably deemed to have in reaching such a determination. Great Northern Railway Company v. Weeks, supra.

Therefore, the appellants' assertion that the phrase "fair market value" is so vague and indefinite as to violate the due process clause of the Fourteenth Amendment, fails to present a substantial federal question.

4. THE DECISION OF THE SUPREME COURT OF GEORGIA, THAT INDIVIDUAL TAXPAYERS DO NOT HAVE STANDING TO CHALLENGE THE UNIFORMITY OF VALUATIONS ON PROPERTY AS BETWEEN POLITICAL SUBDIVISIONS OF THE STATE, DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

In its decision, the Supreme Court of Georgia at the behest of the State Revenue Commissioner, reviewed the lower court's injunction which prohibited the collection of a State property tax in Douglas County. The superior court had enjoined the collection of that tax based

on the fact the property valuations in counties surrounding Douglas County, were lower than those in Douglas County. The injunction was based on an alleged violation of a provision of the Georgia Constitution regarding uniformity, and not on the basis of any violation of the federal constitution.

Nonetheless, the Georgia Supreme Court at least peripherally raised the question of possible violation of the Fourteenth Amendment by referring to its earlier decision in Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116 (1973), in which the Georgia Supreme Court had held that there was no violation of the due process and equal protection provisions of the Federal Constitution merely because the statutes which allowed the State Revenue Commissioner to equalize valuations between counties by raising the valuations in any particular county, did not provide for notice and an opportunity to be heard to individual taxpayers in the counties in which the adjustments were made. The Supreme Court in its decision which is now being challenged, noted that to allow individual taxpayers in each of the 159 counties of Georgia to challenge the factual decision of the State Revenue Commissioner in equalizing as far as practicable the values of property subject to taxation in the State, would result in a chaotic situation. The Supreme Court held that while the State Revenue Commissioner has the duty to equalize the digest between the various counties, if objection is made to the exercise of the discretion of the State

Revenue Commissioner in equalizing the digests, it must come from the county and not from the individual taxpayers particularly since the State Revenue Commissioner has no authority to vary individual valuations, but rather simply "factors" the entire digest.

The appellants' challenge to this conclusion does not raise a substantial federal question, because the issue has previously been considered by this Court in Bi-Metallic Investment Co. v. State Board, 239 U.S. 441 (1915), and decided adversely to the appellants. In that case, the valuation of property in Denver, Colorado, had been raised forty percent by the State tax authorities and no provision was made for either the City of Denver or for the individual taxpayers in Denver to appeal the increase. In that case, Mr. Justice Holmes, speaking for the court, said:

> "The question . . . is whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned - here, for instance, before a superior board decides that the local taxing officers have adopted a system of undervaluation throughout a country, as notoriously often has been the case. The answer of this court in the State Railroad Tax Cases, 92 U.S. 575, at least as to any further notice, was that it was hard to believe that the proposition was seriously made.
>
> Where a rule of conduct applies to more than a few people, it is

> impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meetings or in assembly of the whole." Id. at 445.

The Court suggested that the rights of the individual are protected by their power over those who make the rule. It is not necessary to go to such an abstract length in the matter at bar. While the Supreme Court of Georgia has barred individuals from attacking the State Revenue Commissioner's factual decisions, the counties clearly have the authority to do so. Thus, the individual taxpayers are given an opportunity to have their interest protected through the exercise of this right by the political subdivision of which they are a part.

Therefore, the decision of the Supreme Court of Georgia that individual taxpayers do not have the right to challenge the State Revenue Commissioner's factual determinations as to the uniformity of valuations throughout the State, is supported by Bi-Metallic Investment Co. v. State Board, supra, and there is no substantial federal question presented.

CONCLUSION

It is clear that the issues sought to be presented to this Court do not warrant review. The decision of the Supreme Court of Georgia clearly rested on an adequate nonfederal ground, but even if it had not, the questions presented by the appellants were neither properly raised nor substantial.

Wherefore, for the foregoing reasons the appellees respectfully request that this Court grant the appellees' motion to dismiss the appellants' appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, H. Perry Michael, one of the attorneys for Appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served each party in this action with three copies of the foregoing Motion to Dismiss by depositing three copies of the same in the United States mail, with first class postage prepaid, addressed as follows:

Cecil D. Franklin
Post Office Box 269
Rockmart, Georgia 30153

This _____ day of September, 1976.

_____
H. PERRY MICHAEL, Senior
Assistant Attorney General